IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

INCOME TAX APPEAL NO.693 OF 2004

The Commissioner of Income Tax - 13, Mumbai .. Appellant.

Versus

Ramesh Haridas Ashar .. Respondent.

Mr.Kamal Gupta for the appellant.

Dr.K. Shivram with Mr.Paras S. Savla for the respondent.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 6TH AUGUST, 2007.

P.C. :

1. This appeal is filed by the revenue under Section 260A of the Income Tax Act, 1961 against the order passed by the I.T.A.T. dated 12th December, 2003 in the case of the respondent/assessee relating to A.Y. 1995-96.

2. In this case, treating the assessee as the sole proprietor of M/s.Neha Exports additions were made in the assessment order for A.Y. 1995-96 to the extent the excise authorities found that M/s.Neha Synthetics had evaded central excise duty. The said addition was deleted by C.I.T. (A) and the order of C.I.T. (A) has been upheld by the

Tribunal. Challenging the said order of the Tribunal, the present appeal is filed by the revenue.

3. Dr.K. Shivram, learned counsel appearing on behalf of the respondent brought to our notice that the Tribunal constituted under the Central Excise Act, 1944 has held that Shri Prem Salihar is the sole proprietor of M/s.Neha Synthetics and not the assessee. It is contended that the said order of the Tribunal has become final.

4. The argument of the revenue is that, independent of the order passed by the Tribunal constituted under the Central Excise Act, the Assessing Officer, on the basis of the material on record has come to the conclusion that the assessee is the sole proprietor of M/s.Neha Exports. There is no merit in this contention. Whether there is any evasion of excise duty and if so who is liable to pay the evaded amount is for the excise authorities to decide. Once the Excise authorities have accepted that the sole proprietor of M/s.Neha Synthetics is Shri Prem Salihar and not the assessee, it is not open to the Assessing Officer to hold that the assessee is liable for the excise duty evaded by M/s.Neha Exports and consequently make additions in the hands of the assessee, the amount

of excise duty evaded by M/s.Neha Exports.

5. In this view of the matter, we do not find any merit in the appeal filed by the revenue. Accordingly, the appeal is dismissed with no order as to costs.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)